IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH SEPTEMBER 2006 / 29TH BHADRA 1928

OP.No. 33494 of 2001(K)

PETITIONER:

PREMADASAN, S/O.AYYAPPAN, THARAYIL HOUSE, KOOLIMUTTAM.

BY ADV. SRI.P.RAMAKRISHNAN
SMT.PREETHI KESAVAN

RESPONDENTS:
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1. **THE TAHSILDAR, KODUNGALLUR.**

2. **SASIDHARAN, S/O. KITTAPAI, THARAYIL HOUSE, KOLLIMUTTOM.**

3. **THE ADDITIONAL SALES TAX OFFICER, KODUNGALLOOR.**

BY GOVERNMENT PLEADER SRI.GEORGE KUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.546/2001 IN OP. 33594/2001

DISMISSED

20.9.2006 **SD/- C.N.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SALE DEED ENTERED INTO BETWEEN THE 2ND RESPONDENT & PETITIONER DT. 24.4.1998.

EXT.P2:- COPY OF THE ENCUMBRANCE CERTIFICATE IN RESPECT OF THE PETITIONER'S PROPERTY FOR THE PERIOD JANUARY 1986-1988 OCTOBER DT .5.10.98 ISSUED BY REGISTERING OFFICE, KODUNGALLUR.

EXT.P3:- COPY OF THE NOTICE OF SALE NO.B1. 3226/98/ST DT.19.10.01 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE WRITTEN STATEMENT FILED BY 1ST RESPONDENT IN OS. NO.757/99 ON THE FILE OF THE MUNSIFF COURT, KODUNGAllUR.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR, J.

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O.P. No.33494 of 2001

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Dated this the 20th day of September, 2006.

JUDGMENT

The petitioner is challenging attachment and sale of defaulter's property purchased by the petitioner. Since sale is subject to arrears of sales tax under Section 26A of the KGST Act, respondents 1 and 3 are entitled to attach and sell the property purchased by the petitioner. Further, Section 53 of the Transfer of Property Act declares transaction to defraud creditors also invalid. This certainly applies to amounts due to Government towards arrears of tax. Since the arrears of tax pertains to the year 1995-96 i.e. after introduction of Section 26A of the Act, the sale is invalid and therefore, first respondent is free to proceed for attachment and sale of the property. The O.P. is therefore devoid of any merit and is dismissed. However, if recovery is made from the defaulter subsequent to filing of O.P., then there is no need to proceed against the property purchased by the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

pms